

Remarks

Claims 1 to 18 are currently pending in the present application. Claims 15 and 16 have been withdrawn from consideration.¹

Applicants thank the Examiner for the courtesies extended during the telephone interview of March 20, 2007 with Applicants' representative, Aaron Grunberger (Reg. No. 59,210).

The following is a Statement of Substance of Interview of the telephone interview of March 20, 2007.

During the course of the telephone interview, the restriction requirement of February 23, 2007 was discussed.

During the course of the telephone interview, the Examiner clarified that the restriction requirement of July 24, 2006 between Groups 1A-1F has been withdrawn and that claims 1 to 14, 17, and 18 are currently being considered.

The Office Action requires Applicants to elect between species of digital rights transmission selected from (A) a wireless transmission to a multimedia playback unit and rights analysis unit and (B) a direct transmission from an attached storage unit to a multimedia playback unit and rights analysis unit.

Applicants elect --with traverse-- species B, i.e., a direct transmission of digital rights from an attached storage unit to a multimedia playback unit and rights analysis unit.

As required, Applicants make an election, but traverse this restriction requirement, since the Examiner has not indicated that there would be or why there would be a serious burden on the Examiner if restriction is not required. *See* M.P.E.P. §§ 803(I), 803 (II), 808, and 808.02. Accordingly, the restriction requirement between species A and species B is traversed for this reason.

Furthermore, Applicants traverse this restriction requirement for the additional reason that 35 U.S.C. § 121 provides that "[i]f two or more independent and distinct inventions are **claimed** in one application, the Director may require the application to be restricted to one of the inventions" (emphasis added). For Section 121 to apply, the various species must be **claimed** -- mere support in the specification for the various species is not enough. *See* Geneva Pharms., Inc. v. GlaxoSmithKline PLC, 349 F.3d 1373, 1379 (Fed. Cir.

¹ The Office Action Summary incorrectly indicates that claims 15 and 16 are no longer pending. While claims 15 and 16 have been withdrawn from consideration, they have not been canceled.

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2003). Accordingly, in applications where only generic claims are presented, restriction cannot be required unless the generic claims recite species. Since the claims do not recite the species of digital rights transmission enumerated above, there should not be a requirement to elect between them. Reconsideration of this restriction requirement is respectfully requested.

Furthermore, a provisional election of one of the enumerated species of digital right transmission is not required, since 37 C.F.R. § 1.143 states that "[i]n requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution" (emphasis added). As explained in M.P.E.P. § 806.04(e), "[c]laims are definitions of inventions." Thus, 37 C.F.R. § 1.143 requires election of a claimed invention - and not of unclaimed species.

Nevertheless, Applicants elect --with traverse-- species B, i.e., a direct transmission of digital rights from an attached storage unit to a multimedia playback unit and rights analysis unit.

Prompt consideration and allowance of the present application are therefore respectfully requested.

It is therefore respectfully requested that the election be entered (unless the restriction requirement is withdrawn), and that the present application issue as early as possible.

Respectfully submitted,

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